U.S. Department of Homeland Security
U. S. Citizenship and Immigration Services
Administrative Appeals Office (AAO)
20 Massachusetts Ave., N.W., MS 2090
Washington, DC 20529-2090

(b)(6)

U.S. Citizenship and Immigration Services

DATE: JUN 2 8 2013 OFFICE: NEBRASKA SERVICE CENTER FILE:

IN RE: Petitioner:
Beneficiary:

PETITION: Immigrant Petition for Alien Worker as a Member of the Professions Holding an Advanced Degree or an Alien of Exceptional Ability pursuant to section 203(b)(2) of the Immigration and Nationality Act, 8 U.S.C. § 1153(b)(2)

ON BEHALF OF PETITIONER:

SELF-REPRESENTED

INSTRUCTIONS:

Enclosed please find the decision of the Administrative Appeals Office in your case. All of the documents related to this matter have been returned to the office that originally decided your case. Please be advised that any further inquiry that you might have concerning your case must be made to that office.

If you believe the AAO inappropriately applied the law in reaching its decision, or you have additional information that you wish to have considered, you may file a motion to reconsider or a motion to reopen in accordance with the instructions on Form I-290B, Notice of Appeal or Motion, with a fee of $630. The specific requirements for filing such a motion can be found at 8 C.F.R. § 103.5. **Do not file any motion directly with the AAO.** Please be aware that 8 C.F.R. § 103.5(a)(1)(i) requires any motion to be filed within 30 days of the decision that the motion seeks to reconsider or reopen.

Thank you,

Ron Rosenberg
Acting Chief, Administrative Appeals Office

DISCUSSION: The Director, Nebraska Service Center (Director) denied the employment-based immigrant visa petition. The Administrative Appeals Office (AAO) summarily dismissed the subsequent appeal. The petition is again before the AAO as a motion to reopen and a motion to reconsider. The motions will be dismissed.

The petitioner describes itself as an advertising company. It seeks to permanently employ the beneficiary in the United States as a market analyst pursuant to section 203(b)(2) of the Immigration and Nationality Act (the Act), 8 U.S.C. § 1153(b)(2).[1] As required by statute, the petition was accompanied by an ETA Form 9089, Application for Permanent Employment Certification (labor certification), certified by the U.S. Department of Labor (DOL).

On October 4, 2010, the Director mailed a request for evidence (RFE) to the petitioner's address listed on the petition and the labor certification. The RFE instructed the petitioner to submit evidence that the beneficiary possessed at least five years of experience as a marketing specialist as required by the terms of the labor certification and the requested preference classification. The RFE also instructed the petitioner to submit evidence of its financial ability to pay the beneficiary the $50,377 proffered wage. Finally, the RFE requested evidence of the beneficiary's employment with the petitioner, and noted that the petitioner had not submitted an academic evaluation of the beneficiary's education and a copy of his resume, though these documents were listed in the cover letter accompanying the petition.

The RFE stated that a response from the petitioner was due by December 27, 2010.

The petitioner did not respond to the RFE. The Director's decision denying the petition concluded that the petitioner failed to establish that the beneficiary had obtained at least five years of experience as a marketing specialist, as required by the labor certification and the requested preference classification; and that the petitioner failed to establish its continuing ability to pay the proffered wage from the priority date.

The petitioner appealed the Director's decision to the AAO. On appeal, the petitioner claimed that it did not submit the requested documentation because it had never received the Director's RFE. It is noted that the RFE was mailed to the address listed on the labor certification and the petition, and that the Director's decision denying the petition, which the petitioner received, was mailed to the same address

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[1] Section 203(b)(2) of the Act provides for immigrant classification to members of the professions holding advanced degrees or their equivalent and whose services are sought by an employer in the United States. The regulation at 8 C.F.R. § 204.5(k)(2) defines "advanced degree" as follows:

> *Advanced degree* means any United States academic or professional degree or a foreign equivalent degree above that of baccalaureate. A United States baccalaureate degree or a foreign equivalent degree followed by at least five years of progressive experience in the specialty shall be considered the equivalent of a master's degree. If a doctoral degree is customarily required by the specialty, the alien must have a United States doctorate or a foreign equivalent degree.

as the RFE. The petitioner stated on appeal that it would submit additional documentation to the AAO within 30 days. However, twenty-two months after the filing of the appeal, the petitioner had still not submitted any additional evidence. Therefore, the AAO summarily dismissed the appeal pursuant to 8 C.F.R. § 103.3(a)(1)(v).

The petitioner subsequently filed the instant motion to reopen and reconsider the AAO's decision. The motion was accompanied by a statement from the petitioner's president that he "was not able to submit additional documents in 30 days because it was not really clear what documents are necessary" and that he "was hoping that the AAO will send specific request of necessary documents."[2]

The requirements for a motion to reopen are set forth in the regulation at 8 C.F.R. § 103.5(a)(2):

> A motion to reopen must state the new facts to be provided in the reopened proceeding and be supported by affidavits or other documentary evidence.

The requirements for a motion to reconsider are set forth at 8 C.F.R. § 103.5(a)(3):

> A motion to reconsider must state the reasons for reconsideration and be supported by any pertinent precedent decisions to establish that the decision was based on an incorrect application of law or [U.S. Citizenship and Immigration Services (USCIS)] policy. A motion to reconsider a decision on an application or petition must, when filed, also establish that the decision was incorrect based on the evidence of record at the time of the initial decision.

As further provided in 8 C.F.R. § 103.5(a)(4), "A motion that does not meet applicable requirements shall be dismissed."

The petitioner has presented no new facts or documentation, as required in a motion to reopen, to refute the determination that it had failed to establish its ability to pay the proffered wage and that the beneficiary possessed the five years of required experience. Nor has the petitioner presented any argument or pertinent precedent decisions showing that the prior decision was based on an incorrect application of law or USCIS policy, as required in a motion to reconsider.

Therefore, the petitioner's motions do not meet the requirements of a motion to reopen under 8 C.F.R. § 103.5(a)(2) or a motion to reconsider under 8 C.F.R. § 103.5(a)(3).

Motions for the reopening or reconsideration of immigration proceedings are disfavored for the same reasons as petitions for rehearing and motions for a new trial on the basis of newly discovered

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[2] It is noted that the Director's decision denying the petition described in detail the evidence required for petition approval. Thus, the AAO does not accept the petitioner's claim that "it was not really clear what documents are necessary."

evidence. *See INS v. Doherty*, 502 U.S. 314, 323 (1992) (citing *INS v. Abudu*, 485 U.S. 94 (1988)). A party seeking to reopen a proceeding bears a "heavy burden." *INS v. Abudu*, 485 U.S. at 110. With the current motion(s), the movant has not met that burden. Therefore, the motion(s) will be dismissed in accordance with 8 C.F.R. § 103.5(a)(4).

ORDER: The motions to reopen and reconsider are dismissed. The Director's decision denying the petition on February 18, 2011, and the AAO's decision summarily dismissing the appeal on February 5, 2013, are affirmed.